STATE OF MICHIGAN

COURT OF APPEALS

WALTON WALTERS,

Plaintiff-Appellee,

v

SHEREE L. WALTERS, a/k/a SHEREE L. HANSON,

Defendant-Appellant.

UNPUBLISHED
June 13, 2006

No. 266351
Newaygo Circuit Court
LC No. 99-001406-DM

Before: O'Connell, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from an order of the trial court that decreased the amount of parenting time that she had been granted in her divorce judgment. We affirm.

Defendant voluntarily reduced her court-ordered parenting time of alternating week-long periods to every weekend, then allegedly missed some of her reduced parenting time. Plaintiff filed a motion for change in custody. The trial court ordered defendant's parenting time temporarily reduced from the amount granted in the divorce judgment, giving plaintiff ten out of every fourteen days and defendant the other four days during the school year (ten-day/four-day split), followed by alternating weeks during the summer. After defendant also moved for custody, the parties reached an agreement on November 19, 2004, that both custody motions would be dismissed and that parenting time would be adjusted to a ten-day/four-day split during the school year. The parties also agreed that defendant would be entitled to one extra week of parenting time in the summer of 2005 followed by a potential extra week each summer subject to an in-court interview of the child and the trial court's concurrence. The extra-week provision was not part of the original proposed order but was penciled in and initialed by the trial judge. Plaintiff then read into the record those parts of the settlement that were not contained on the signed agreement, and when asked if both parties understood and agreed to abide by the settlement, both parties answered affirmatively. Although the stipulation was memorialized in what appears to be an order signed by the parties' attorneys and the trial court, neither party mentions this signed agreement on appeal. Later, plaintiff filed a proposed order purportedly incorporating the settlement, but defendant objected, arguing that even though she had agreed to the ten-day/four-day split, the proposed order was incomplete because it did not provide for the extra week of summer visitation. Defendant later changed her position and argued that she had only agreed to dismiss the competing motions for custody and had never agreed to modify her

parenting time. The trial court eventually entered a final order reflecting a ten-day/four-day split and granting the "majority" of summer vacation to defendant.

Defendant argues that the trial court committed various errors in entering the final order. We disagree. "Orders concerning parenting time must be affirmed on appeal unless the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue." *Pickering v Pickering*, 268 Mich App 1, 5; 706 NW2d 835 (2005).

Defendant first argues that the stipulation to revise the parenting time schedule was insufficient to establish a meeting of the minds between the parties. We disagree. When the transcript is read with the signed agreement, it presents sufficient evidence to support the trial court's conclusion that the parties reached a settlement. MCR 2.507(G). Therefore, the trial court's finding that the parties entered a stipulation was not against the great weight of the evidence. Defendant's argument is also inconsistent with the transcript and her concessions following the November 19, 2004 proceeding.

Defendant also argues that the evidence did not establish that the change in parenting time was in the best interest of the child. A trial court cannot merely accept an agreement concerning parenting time without first evaluating whether it runs contrary to the best interests of the child. *Lombardo v Lombardo*, 202 Mich App 151, 160; 507 NW2d 788 (1993). However, the trial court correctly found that the parties agreed to a parenting time schedule, so MCL 722.27a(2) applies and states that a court should follow the stated terms of the agreement "unless the court determines on the record by clear and convincing evidence that the parenting time terms are not in the best interests of the child." The trial court's final opinion evaluated each of the best interest factors contained in MCL 722.23 and ultimately held that a schedule essentially adhering to the November agreement comported with the child's best interests. Therefore, defendant's argument lacks merit.

Defendant next argues that the evidence did not establish a proper cause or change in circumstances to justify modifying the original divorce order of equal parenting time. We disagree. It is undisputed that at the time plaintiff moved for modification of custody or parenting time, defendant had missed a great deal of her court-ordered parenting time and had not yet achieved stability in her life. Before deciding to hold trial on the custody and parenting time issues, the trial court ruled that "there has been proper cause shown that a change may be justified." The trial court's finding of proper cause and changed circumstances was not against the great weight of the evidence, nor did the trial court abuse its discretion in deciding that the changed circumstances warranted a revision of parenting time.

Defendant also argues that the trial court failed to determine whether an established custodial environment existed. Defendant's argument lacks merit. The trial court specifically acknowledged the parties' shared custodial environment when it voiced its desire to avoid making any parenting time change that might alter the environment. Under the final order, both parties continued to share joint legal and joint physical custody, and both parties were granted parenting time similar to what they had actually been experiencing before plaintiff brought his motion. Although the trial court did not use the phrase "established custodial environment," it expressly stated that it approved the parties' settlement because defendant had exercised parenting time only on alternating weekends for a six-month period. Therefore, the trial court's

order did not affect the custodial environment that existed at the time plaintiff filed his original motion. To the extent that defendant premises her argument on a new custodial environment established during the four weeks immediately preceding the trial court's opinion, the argument still fails. The four-week period, during which the parties allegedly alternated weeks of parenting, was not "an appreciable time," especially since it followed the existent alternating week schedule of summer vacation. MCL 722.27(1)(c); see also *Jack v Jack*, 239 Mich App 668, 670; 610 NW2d 231 (2000). Defendant also fails to explain how equally shared parenting time could justify anything other than the shared custodial environment that the trial court ultimately preserved.

Finally, defendant argues that the trial court failed to enter an order for specific parenting time as required by MCL 722.27a(7). See *Pickering*, *supra* at 6-7. However, the type of parenting time schedule required by *Pickering* is conditioned on a request for "[p]arenting time . . . in specific terms" under MCL 722.27a(7). A request for more parenting time is not itself a request for specific parenting time, and defendant only generally requested additional parenting time. Therefore, she does not demonstrate any error in the trial court's order.

Affirmed.

/s/ Peter D. O'Connell
/s/ William B. Murphy
/s/ Kurtis T. Wilder